

FEDERAL RESERVE BANK
OF NEW YORK

Circular No. 8367
June 2, 1978

TRUTH IN LENDING
Criteria for State Exemptions
From Federal Consumer Leasing Requirements

*To All Member Banks, and Others Concerned,
in the Second Federal Reserve District:*

Following is the text of a statement issued by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System has adopted criteria under which States may apply for exemption from the consumer leasing requirements of the Truth in Lending Act and the Board's Regulation Z.

A State may also apply to the Board for a determination that its law is not inconsistent with or pre-empted by the Federal consumer leasing law.

The main features of the criteria for exemption of State consumer leasing laws are the same as for exemptions for State laws from other provisions of the Truth in Lending Act and Regulation Z. These are:

- A determination by the Board that the State law imposes requirements substantially similar to, or is more protective and confers greater consumer benefits than the relevant Federal law.
- A Board determination that the State law makes adequate provision for enforcement.

The Board may not determine that a State law is inconsistent with, or is pre-empted by, Federal law if the State law provides greater protection or benefits.

The Board also delegated authority to make these findings to the Director of the Board's Consumer Affairs Division. The Director may not deny or revoke an exemption or make a finding of inconsistency.

Enclosed are copies of Supplement VI to Regulation Z and an amendment to the Board's Rules Regarding Delegation of Authority, reflecting the Board's actions. Questions regarding the enclosures may be directed to our Consumer Affairs Division (Tel. No. 212-791-5919).

PAUL A. VOLCKER,
President.

TRUTH IN LENDING

SUPPLEMENT VI TO REGULATION Z

[Reg. Z; Docket No. R-0159]

PART 226—TRUTH IN LENDING

Supplement VI

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This supplement to Regulation Z prescribes the criteria and procedures under which a State may apply for an exemption from the requirements of Chapter 5 (Consumer Leases) of the Truth in Lending Act (the Act) or for a determination that a State law is not inconsistent with or preempted by the consumer leasing provisions of Truth in Lending and Regulation Z. The Board has issued this supplement to provide procedures and criteria under which it will grant exemptions under the Act.

EFFECTIVE DATE: May 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Anne Geary, Chief Staff Attorney, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2761.

SUPPLEMENTARY INFORMATION:

(1) Section 186(b) of Chapter 5 of the Truth in Lending Act authorizes the Board to grant exemptions from Chapter 5 to States, if the Board determines that the State law imposes requirements substantially similar to those of Chapter 5 or that the State law provides greater protection and benefit to consumers than is provided therein. In addition, the Board must determine that there is adequate provision for enforcement of the State law. Section I of the Supplement sets forth the criteria and procedures under which a State may secure such an exemption.

Section 186(a) authorizes the Board to make determinations whether a State law is inconsistent with or preempted by Chapter 5 of the Federal law in any respect. The Board is prohibited from determining that a State law is inconsistent with any provision of Chapter 5 when the State law provides greater protection and benefit to consumers than does Chapter 5. Section II of the Supplement prescribes the criteria and procedures under which a State may secure such a determination.

(2) The provisions of 5 U.S.C. § 553, relating to notice, public participation and deferred effective dates have not been followed in connection with the adoption of this rule because it relates to agency procedures.

(3) Pursuant to the authority granted in 15 U.S.C. § 1604 (1968), the Board hereby files the following Supplement VI as part of the original document, and it will not be carried in 12 CFR Part 226, effective May 17, 1978.

SUPPLEMENT VI TO REGULATION Z

TRUTH IN LENDING

(SECTIONS 226.12 & 226.6(b)(3)—SUPPLEMENT)

SECTION I—EXEMPTIONS

Procedures and criteria under which any State may apply for exemption from the provisions of Chapter 5 of the Truth in Lending Act pursuant to paragraph (a) of § 226.12.

(a) *Application.* Any State may make application to the Board, pursuant to the terms of Section I of this supplement and the Board's Rules of Procedure (12 CFR 262), for a determination that under the laws of that State,¹ consumer lease transactions, as provided in section 181(1) of the Act and § 226.2(mm) of this Part, within that State are subject to requirements which are substantially similar to those imposed under Chapter 5 of the Act² or which provide greater protection and benefit to lessees than those provided under Chapter 5, and that there is adequate provision for enforcement of such requirements. Such application shall be made by letter addressed to the Board signed by the Governor, the Attorney General, or any official of the State having responsibilities under the State laws which are applicable to the relevant class of transactions.

(b) *Supporting documents.* The application shall be accompanied by

(1) A copy of the full text of the laws of the State which are claimed by the applicant to impose requirements substantially similar to those imposed under Chapter 5 or to provide greater protection and benefit to lessees than does Chapter 5 with respect to consumer lease transactions as defined in § 226.2(mm) of this Part.

(2) A comparison of each requirement of State law with the corresponding requirement of Chapter 5, together with reasons to

support the claim that the requirements of State law are substantially similar to or provide greater protection and benefit to lessees than requirements of Chapter 5 with respect to the class of consumer lease transactions. It shall also demonstrate that any differences are not inconsistent with and do not result in a diminution in the protection and benefit afforded lessees under Chapter 5 and state that there are no other State laws which, due to their relation to the State law under consideration, should be considered by the Board in making its determination.

(3) A copy of the full text of the laws of the State which provide for enforcement of the State laws referred to in subparagraph (1) of this paragraph.

(4) A comparison of the provisions of State law with the provisions of Sections 108, 112, 130, 131, 183(a), 183(b), 185(a) and 185(c) of the Act, together with reasons to support the claim that such State laws provide for

(i) Administrative enforcement of the State laws referred to in subparagraph (1) of this paragraph which is equivalent to the enforcement provided under Section 108 of the Act;

(ii) Criminal liability for willful and knowing violation of the State law with penalties substantially similar to those prescribed under Section 112 of the Act, except that more severe penalties may be provided;

(iii) Civil liability for failure to comply with the requirements of the State law, including class action liability, which is substantially similar to that provided under Sections 130, 131 185(b) except that more severe penalties may be provided;

(iv) In leases where the lessee's liability at the end of the lease term is based on the estimated value of the leased property, a limitation on the lessee's liability at the end of the least term substantially similar to that provided by paragraph (a) of Section 183 of the Act, except that a stricter limitation may be provided;

(v) A provision prescribing that all penalties and other charges for delinquency, default or early termination specified in the lease must be reasonable substantially similar to that provided in paragraph (b) of Section 183 of the Act, except that a stricter provision may be provided.

(vi) A statute of limitations that prescribes a period in which to institute civil actions of substantially similar duration as that provided under paragraph (c) of Section 185 of the Act, except that a longer period may be provided.

(5) A statement identifying the office designated or to be designated to administer the State laws referred to in subparagraph (1) of this paragraph, together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged therein, and a description of the procedures under which such State laws are to be administratively

¹Any reference to State law in Supplement VI includes a reference to any regulations which implement State law and formal interpretations thereof by a court of competent jurisdiction or a duly authorized agency of that State.

²Any reference in Supplement VI to Chapter 5 of the Act or any section thereof includes a reference to the implementing provisions of this Part and the Board's formal interpretations thereof.

enforced, including administrative enforcement with respect to Federally-chartered lessors.³ The foregoing statement should include reasons to support the claim that there is adequate provision for enforcement of such State laws.

(c) *Criteria for Determination.* The Board will consider the following criteria along with any other relevant information in making a determination whether the laws of a State impose requirements substantially similar to or provide greater protection and benefit to lessees than under Chapter 5, and whether there is adequate provision for enforcement of such laws:

(1) In order for provisions of State law to be substantially similar to or provide greater protection and benefit to lessees than the provision of Chapter 5, the provisions of State law⁴ shall require that:

(i) Definitions and rules of construction import the same meaning and have the same application as those prescribed under § 226.2 of this Part;

(ii) Lessors make all of the applicable disclosures required by this Part and within the same (or more stringent) time periods as are prescribed by this Part;

(iii) Lessors abide by obligations substantially similar to those prescribed by Chapter 5, under conditions substantially similar to (or more stringent than those prescribed in Chapter 5;

(iv) Lessors abide by the same (or more stringent) prohibitions as are provided by Chapter 5;

(v) Lessees need comply with no obligations or responsibilities which are more costly or burdensome as a condition of exercising any of the rights or gaining the benefits and protections in the State law which correspond to those afforded by Chapter 5, than those obligations or responsibilities imposed upon lessees in Chapter 5;

(vi) Substantially similar or more favorable rights and protections are provided to lessees under conditions substantially similar to or more favorable (to lessees) than those afforded by Chapter 5.

(2) In determining whether the provisions for enforcement of the State law referred to in paragraph (b)(1) are adequate, consideration will be given to the extent to which, under the laws of the State, provision is made for

(i) Administrative enforcement, including necessary facilities, personnel and funding;

(ii) Criminal liability for willful and knowing violation with penalties substantially similar to those prescribed under Section 112, except that more severe criminal penalties may be prescribed.

(iii) Civil liability for failure to comply with the provisions of the State law substantially similar to that provided under sections 130, 131 and 185(b), except that

³Transactions within a State in which a Federally-chartered institution is a lessor shall not be subject to the exemption, and such Federally-chartered lessors shall remain subject to the requirements of the Act and administrative enforcement by the appropriate Federal authority under section 108, unless it is established to the satisfaction of the Board that appropriate arrangements have been made with such Federal authorities to assure effective enforcement of the requirements of State laws with respect to such lessors.

⁴This paragraph is not to be construed as indicating that the Board would consider adversely any additionally requirements of State law which are not inconsistent with the purpose of the Act or the requirements imposed under Chapter 5.

more severe civil liability penalties may be prescribed;

(iv) In leases where the lessee's liability at the end of the lease term is based on the estimated value of the leased property, a limitation on the lessee's liability at the end of the lease term substantially similar to that provided in section 183(a), and a provision requiring that penalties be reasonable substantially similar to that provided in section 183(b), except that stricter standards on end-term liability and penalty provisions may be prescribed;

(v) A statute of limitations with respect to civil liability of substantially similar duration to that provided under section 185(c), except that a longer duration may be provided.

(d) *Public notice of filing and proposed rule making.* Following initial review of an application filed in accordance with the requirements of paragraphs (a) and (b) of section I, notice of such filing and proposed rule making will be published by the Board in the FEDERAL REGISTER, and a copy of such application will be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank of each Federal Reserve District in which any part of the State of the applicant is situated. A reasonable period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons with respect to that application.

(e) *Exemption from requirements of Chapter 5.* If the Board determines that under the law of a State consumer lease transactions are subject to requirements which are substantially similar to or which provide greater protection and benefit to lessees than those imposed under Chapter 5 and that there is adequate provision for enforcement, the Board will exempt such class of transactions in that State from the requirements of Chapter 5 in the following manner and subject to the following conditions:

(1) Notice of the exemption will be published in the FEDERAL REGISTER, and the Board will furnish a copy of such notice to the official who made application for such exemption and to each Federal authority responsible for administrative enforcement of the requirements of Chapter 5.

(2) The appropriate official of any State which receives an exemption shall inform the Board within 30 days of the occurrence of any change in its related law (including regulations). The report of any such change shall contain the full text of that change together with statements setting forth the information and opinions with respect to that change as specified in subparagraphs (2) and (4) of paragraph (b). The official who has received an exemption shall file with the Board from time to time such reports as the Board may require.

(3) The Board will inform the official of any subsequent amendments to Chapter 5 (including the implementing provisions of this Part and the Board's formal interpretations) which might call for amendment of State law, regulations or formal interpretations thereof.

(f) *Adverse Determination.* (1) If the Board denies the application for exemption, it will notify the appropriate State official of the facts upon which its decision is based and shall afford that State a reasonable opportunity to demonstrate or achieve compliance.

(2) If, after giving the State an opportunity to demonstrate or achieve compliance, the Board finds that it still cannot grant the exemption, the Board will publish in the FEDERAL REGISTER a notice of its decision and will furnish a copy of such notice to the

official who made application for such exemption.

(g) *Revocation of exemption.* (1) The Board reserves the right to revoke any exemption if at any time it determines that the State law does not, in fact, impose requirements which are substantially similar to or provide greater protection and benefit to lessees than those imposed under Chapter 5, or that there is not, in fact, adequate provision for enforcement.

(2) Before revoking any State exemption, the Board will notify the appropriate State official of the facts or conduct which in the opinion of the Board warrants such revocation and shall afford that State such opportunity as the Board deems appropriate to demonstrate or achieve compliance.

(3) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Board determines that the State has not done so, notice of the Board's intention to revoke such exemption shall be published as a notice of proposed rulemaking in the FEDERAL REGISTER. A period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons.

(4) In the event of revocation of such exemption, notice of such revocation shall be published by the Board in the FEDERAL REGISTER, and a copy of such notice shall also be furnished to the appropriate State official and to the Federal authorities responsible for enforcement of requirements of Chapter 5, and the class of transactions affected within that State shall then be subject to the requirements of Chapter 5, to administrative enforcement as provided under section 108, to criminal liability as provided under section 112, and to civil liability as provided under sections 130, 131 and 185(b).

SECTION II—PREEMPTION

Procedures and criteria under which any State may apply for a determination that a State law is not inconsistent with and not preempted by a provision of Chapter 5 of the Act pursuant to § 226.6(b)(3) of this Part.

(a) *Application.* Any State may make application to the Board pursuant to the terms of section II of this supplement and the Board's Rules of Procedure (12 CFR 262), for a determination that a law of such State is consistent⁵ with a provision of Chapter 5 of the Act, because such State law provides greater protection and benefit to lessees than does the provision of Chapter 5, that such law is consistent with a provision of Chapter 5 for any other reason, or for a determination of any issues not clearly covered by § 226.6(b) with regard to the relationship of the Federal law to the State law. Such application shall be made by letter addressed to the Board signed by the Governor, Attorney General or any official of the State having responsibilities under the State law put forward for consideration.

(b) *Supporting Documents.* The application shall be accompanied by:

(1) A copy of the full text of the laws of the State which are claimed by the applicant to be consistent with a provision of Chapter 5 or whose relationship (with regard to consistency or inconsistency) to a provision of Chapter 5 is claimed by the applicant to be not clearly covered by the standards and criteria for comparison set forth in § 226.6(b) of this Part.

⁵For purposes of this supplement, the terms "consistent" and "not inconsistent" shall convey the same meaning and shall involve the same evidentiary showing.

(2) A comparison of each requirement of the State law with the corresponding requirement of Chapter 5, with reasons to support the claim that the State law is consistent with a provision of Chapter 5 or that the relationship (with regard to consistency or inconsistency) between the State law and Chapter 5 is not clearly covered by the standards and criteria set forth in § 226.6(b) of this Part.

(3) A copy of the full text of any provisions of State law corresponding to sections 112, 130, 131, 183(a), 183(b), 185(b), and 185(c) (if applicable), together with reasons for the applicant's claim that such State provisions are not inconsistent (because they provide greater protection and benefit to lessees or for other reasons) with the Act.

(4) A statement that there are no State laws (including administrative or judicial interpretations) other than those submitted to the Board which have any bearing on whether or not the State law is consistent with a provision of Chapter 5.

(5) A statement identifying the office designated or to be designated to administer the State laws referred to in subparagraph (1) of this paragraph. If no such administrative office exists, then a statement identifying the office to which the Board can address any correspondence regarding the request for such determination shall accompany the application.

(c) *Criteria for Determination.* The Board will consider the following criteria along with any other relevant information, in addition to the criteria set forth in § 226.6(b) of this Part, in making a determination of whether or not State law is inconsistent with a provision of Chapter 5. In order for provisions of State law to be determined to be consistent with a provision of Chapter 5, the provisions of State law⁶ shall, to the extent relevant to the determination, require that:

(1) Definitions and rules of construction import the same meaning and have the same application as those prescribed by this Part;

(2) Lessors make all of the applicable disclosures required by the corresponding provision of Chapter 5 and this Part, and within the same (or more stringent) time periods as those prescribed by this Part;

(3) Lessors abide by obligations substantially similar to those prescribed by a provision of Chapter 5 under conditions substantially similar (or more stringent) to those in Chapter 5;

(4) Lessors abide by the same (or more stringent) prohibitions as are provided by Chapter 5;

(5) Lessees need comply with no obligations or responsibilities which are more costly or burdensome as a condition of exercising any of the rights or gaining the bene-

fits and protections provided in the State law, which correspond to those afforded by Chapter 5, than those obligations or responsibilities imposed on lessees in Chapter 5;

(6) Lessees are to have rights and protections substantially similar to or more favorable than those provided by the corresponding provisions of Chapter 5 under conditions and within time periods which are substantially similar to or more favorable (to lessees) than those prescribed by Chapter 5.⁷

(d) *Public notice of filing and proposed rulemaking.* In connection with any application which has been filed in accordance with the requirements of paragraphs (a) and (b) of section II of this supplement, notice of such filing and proposed rulemaking will be published by the Board in the FEDERAL REGISTER, and a copy of such application will be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank of each Federal Reserve District in which any part of the State of the applicant is situated. A period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons with respect to that application.

(e) *Determination that a State Law is consistent with chapter 5.* If the Board determines on the basis of the information before it that the law of a State is consistent with a provision of chapter 5, notice of such determination shall be published in the following manner and shall be subject to the following conditions:

(1) Notice of the determination will be published in the FEDERAL REGISTER, and the Board will furnish a copy of such notice to the official who made application for such exemption and to each Federal authority responsible for administrative enforcement of the requirements of Chapter 5.

(2) The appropriate official of any State which receives such a determination shall inform the Board within 30 days of the occurrence of any change in its related law (or regulations). The report of any such change shall contain copies of the full text of the law, as changed, together with statements setting forth the information and opinions with respect to that change as specified in subparagraphs (2) and (4) of paragraph (b) of section II. The appropriate official of any State which has received such a determination shall file with the Board from time to time such reports as the Board may require.

(3) The Board will inform the appropriate official of any State which receives such a determination of any subsequent amendments to chapter 5 (including the imple-

menting provisions of this part and the Board's formal interpretations) which might call for amendment of State law, regulations, or formal interpretations.

(f) *Adverse determination.* (1) If, after publication of notice in the FEDERAL REGISTER as provided under paragraph (d), the Board finds that such State law is inconsistent with a provision of chapter 5, it will notify the appropriate State official of the facts upon which such finding is based and shall afford that State official a reasonable opportunity to demonstrate further that such State law is not inconsistent with the corresponding provisions of chapter 5, if such State official desires to do so.

(2) If, after having afforded the State official such further opportunity to demonstrate that the State law is consistent with a provision of chapter 5, the Board finds that the State law is inconsistent, it will publish in the FEDERAL REGISTER a notice of its decision with respect to such application and will furnish a copy of such notice to the official who made application for the determination.

(g) *Reversal of determination.* (1) The Board reserves the right to reverse any determination made under section II of this supplement to the effect that a State law is consistent with a provision of chapter 5 because of subsequently discovered facts, a change in the State or Federal law (by amendment or administrative or judicial interpretation or otherwise) or for any other reason bearing on the coverage or impact of the State or Federal law.

(2) Before reversing any such determination, the Board will notify the appropriate State official of the facts or conduct which, in the opinion of the Board, warrants such reversal and shall afford that State such opportunity as the Board deems appropriate under the circumstances to demonstrate that the determination should not be reversed.

(3) If, after having been afforded the opportunity to demonstrate that its law is consistent with a provision of chapter 5, the Board determines that the State has not done so, notice of the Board's intention to reverse such determination shall be published as a notice of proposed rulemaking in the FEDERAL REGISTER. A reasonable period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons.

(4) In the event of reversal of such determination, notice shall be published by the Board in the FEDERAL REGISTER, and a copy of such notice shall also be furnished to the appropriate State official and to the Federal authorities responsible for enforcement of the requirements of chapter 5, and the State law affected shall then be considered inconsistent with and preempted by chapter 5 within the meaning of section 186(a).

By order of the Board of Governors,
May 1, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-12930 Filed 5-16-78; 8:45 am]

⁶This paragraph is not to be construed as indicating that the Board would consider adversely any additional requirements of State law which are not inconsistent with the purposes of the Act or the requirements imposed under Chapter 5.

⁷A State may make a showing that in certain limited readily identifiable circumstances a law which may otherwise be inconsistent with a provision of Chapter 5 is not inconsistent under the criteria set forth in paragraph (c) of Section II of this supplement. The Board may determine such State law to be consistent only under those circumstances but will make no such determination if doing so would mislead or confuse lessees.

RULES REGARDING DELEGATION OF AUTHORITY

AMENDMENT

[Docket No. R-0160]

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Delegation of Authority to Grant Exemptions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This rule delegates to the Director of the Division of Consumer Affairs the authority to grant (but not deny or revoke) exemptions to States from the requirements of Chapter 5 (Consumer Leases) of the Truth in Lending Act (the Act), when State law imposes substantially similar requirements or provides greater protection and benefit to the consumer, and there is adequate provision for enforcement. In addition, a technical amendment to the existing delegation of authority has been made. The delegation will add the authority to grant exemptions to States from the requirements of the consumer leasing provisions of the Act to the existing delegation of authority.

EFFECTIVE DATE: May 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Anne Geary, Chief Staff Attorney,
Division of Consumer Affairs, Board
of Governors of the Federal Reserve
System, Washington, D.C. 20551,
202-452-2761.

SUPPLEMENTARY INFORMATION:

(1) The Board has delegated authority to the Director of the Division of Consumer Affairs to grant (but not deny or revoke) exemptions to States from the requirements of Chapter 5 (Consumer Leases) of the Truth in Lending Act, 15 U.S.C. § 1667(e) (1976), and its implementing regulation. The procedures and criteria by which such exemptions may be granted are contained in Supplement VI to Regula-

tion Z. Such delegations have been made to the Director of the Division of Consumer Affairs for the other chapters of Truth in Lending.

In addition, a minor technical amendment has been made to the existing delegation to insure its conformity with the statute.

(2) The provisions of 5 U.S.C. 553, relating to notice, public participation and deferred effective dates have not been followed in connection with the adoption of this rule because it relates to agency procedures.

(3) Pursuant to the provisions of the Section 11(k) Federal Reserve Act (12 U.S.C. 248(k)), the Board hereby revises 12 CFR Part 265.2(h)(2) to read as follows, effective May 17, 1978.

§ 265.2 Specific functions delegated to
Board employees and to the Federal
Reserve Bank.

* * * * *

(h) ***

(2) Pursuant to Sections 123, 171(b) and 186(b) of the Truth in Lending Act (15 U.S.C. 1633, 1666(j) and 1667(e)) and the Board's Regulation Z, 12 CFR Part 226.12, to grant, but not deny or revoke, exemptions to States from the requirements of

(i) Chapter 2 (15 U.S.C. 1631-1644), where State law imposes substantially similar requirements and there is adequate provision for enforcement,

(ii) Chapter 4 (15 U.S.C. 1666), where State law imposes substantially similar requirements or gives greater protection to the consumer and there is adequate provision for enforcement, and

(iii) Chapter 5 (15 U.S.C. 1667), where State law imposes substantially similar requirements or gives greater protection and benefit to the consumer, and there is adequate provision for enforcement.

By order of the Board of Governors,
May 1, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-13446 Filed 5-16-78; 8:45 am]

For these Rules to be complete, retain:

- 1) Printed pamphlet, as amended September 1, 1977.
- 2) Amendments effective September 27, 1977, October 5, 1977, October 6, 1977, November 16, 1977, and January 26, 1978.
- 3) This slip sheet.

[Enc. Cir. No. 8367]